

LR 56 - Summary Judgment

See Fed. R. Civ. P. 56

LR 56-1 Motion for Summary Judgment

(a) ~~Motion Requirements~~ Supporting Factual Positions

A party's factual positions must be supported by citations, by page and line as appropriate, to the particular parts of materials in the record.

~~A motion for summary judgment must be accompanied by the following two separately filed documents:~~

- ~~(1) Memorandum in Support: The supporting memorandum must address applicable law and explain why there are no genuine issues of material fact to be tried.~~
- ~~(2) Concise Statement of Material Facts: A separately filed concise statement must articulate the undisputed relevant material facts that are essential for the Court to decide only the motion for summary judgment—not the entire case. (See also LR 56-1(e) for formatting and citation instructions.)~~

Practice Tip

Unless a specific time has been set by the Court by order or scheduling order, the last day on which a summary judgment can be filed is governed by Fed. R. Civ. P. 56(e)(1)(a), which provides that "a party may move for summary judgment at any time until 30 days after the close of all discovery." The Court has eliminated the former requirement that parties making or opposing a motion for summary judgment must submit a separate concise statement of material facts.

~~(b) Opposition and Reply Requirements~~

- ~~—(1) Opposition to a motion for summary judgment must include a separately filed response to the separate concise statement that responds to each numbered paragraph of the moving party's facts by:
 - ~~—(A) Accepting or denying each fact contained in the moving party's concise statement; or~~
 - ~~—(B) Articulating opposition to the moving party's contention or interpretation of the undisputed material fact.~~~~
- ~~—(2) After responding to the moving party's numbered paragraphs, the responding party may then articulate other relevant material facts which are at issue or are otherwise necessary for the Court to determine the motion for summary judgment.~~
- ~~—(3) The moving party must reply to the responding party's additional facts in the manner set forth in LR 56-1(b)(1).~~

~~(c) Concise Statement: (See Defendant's Concise Statement on Material Facts form)~~

- ~~(1) Facts must be stated in separately numbered paragraphs. A party must cite to a particular affidavit, deposition, or other document (indicating both page and line number references where appropriate) supporting the party's statement, acceptance, or denial of the material fact.~~

~~(2) A party may reference only the material facts which are necessary for the Court to determine the limited issues presented in the motion for summary judgment and no others.~~

~~(3) Document referenced in the separate concise statement are not to be filed in their entirety. Instead, the filing party must extract and highlight only the relevant portions of each referenced document. Photocopies of extracted pages, with appropriate identification and highlighting will be adequate.~~

~~(d) Page Limitations.~~

~~Unless approved by the Court in advance, neither the concise statement nor any response or reply thereto, may be longer than five (5) pages. Statements in excess of that amount may be stricken by the Court with direction to counsel to further condense the statement.~~

~~(e) Scope of Judicial Review~~

~~Except as otherwise required by law, when resolving a motion for summary judgment, the Court has no independent duty to search and consider any part of the Court record not otherwise referenced in the separate concise statements of the parties.~~

~~**(f) Admission of Material Facts.** For purposes of a motion for summary judgment, material facts set forth in the concise statement of the moving party, or in the response to the moving party's concise statement, will be deemed admitted unless specifically denied or otherwise controverted by a separate concise statement of the opposing party.~~

(bg) Evidentiary Objections

Rather than filing a motion to strike, a party may assert evidentiary objections in its response or reply memorandum. If an evidentiary objection is raised in the non-moving party's response memorandum, the moving party may address the objection in its reply memorandum; the non-moving party may not file further briefing on its evidentiary objection. If an evidentiary objection is raised by the moving party in its reply memorandum, the non-moving party may file a surreply memorandum pursuant to this subparagraph within seven days addressing only the evidentiary objection; the moving party may not file further briefing on its evidentiary objection. If a party asserts an evidentiary objection in a motion to strike evidence, no reply memorandum is permitted. Unless otherwise ordered by the court, any oral argument as to evidentiary objections will be scheduled for the same time as the summary judgment motion.

Commentary
An evidentiary objection in a response or reply memorandum may be supported by argument and should be stated concisely. There is no need to make a separate motion to strike. <i>See Pfingston v. Ronan Engineering Co.</i> , 284 F.3d 999, 1003 (9th Cir. 2002); Fed. R. Evid. 103(a)(1). If the case goes to trial, failure to challenge admissibility at the summary judgment stage does not forfeit the right to challenge admissibility at trial.

Amendment History to LR 56	
June 1, 2002	
LR 56.1(a)(2)	Cross reference LR 56.1(c) formatting and citation instructions to be included in the Concise Statement.
LR 56.1(b)	" and Reply . . ." added to caption.
LR 56.1(b)(2)	Last sentence added for clarification.
LR 56.1(c)	Requirement to include page number and line number (where appropriate) information to the Concise Statement.
LR 56.1(f)	"or in the response . . ." added. June 1, 2006 Generally Appendix of Forms numbers updated.
June 1, 2006	
Generally	Appendix of Forms numbers updated.
LR 56.1(a) & LR 56.1(b)(1)	The words "separately filed . . ." added
LR 56.1(d)	The words "neither" and "nor any response or reply thereto" added The word "not" stricken. The word "stricken" substituted for "returned"
December 1, 2009	
LR 56	Practice Tip and Commentary added. References to Appendix of Forms deleted.
LR 56-1(b)(1)(B)	The phrase "moving party" substituted for "movant."
LR 56-1(b)(3)	Reworded for clarification.
LR 56-1(c)(1)	The word "must" substituted for "shall."
LR 56-1(c)(3)	The phrase "are not to" substituted for "shall not."
LR 56-1(g)	Added to establish briefing requirements for evidentiary objections.

<u>Suggested Changes for October, 2010</u>	
<u>LR 56</u>	<u>Practice Tip added to call practitioners' attention to elimination of requirement that parties must submit a concise statement of material facts.</u>
<u>LR 56-1(a)(1), (b), (e), (f)</u>	<u>Amended to delete matters addressed in proposed amendments to Fed. R. Civ. P. 56.</u>
<u>LR 56-1(a)(2), (c), (d)</u>	<u>Requirement to submit concise statement of material facts and related provisions stricken.</u>
<u>LR 56-1(b)</u>	<u>Former LR 56-1(g) moved to LR 56-1(b).</u>